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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/079,848	02/22/2002	Michael Musarella	87185-3300	7571
28765	7590	03/10/2004		
WINSTON & STRAWN PATENT DEPARTMENT 1400 L STREET, N.W. WASHINGTON, DC 20005-3502			EXAMINER	ELKINS, GARY E
			ART UNIT	PAPER NUMBER
			3727	

DATE MAILED: 03/10/2004  
*13*

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	Application No.	Applicant(s)
	10/079,848	MUSARELLA ET AL. <i>CH</i>
	Examiner	Art Unit
	Gary E. Elkins	3727

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on 15 December 2003.  
 2a) This action is FINAL.                    2b) This action is non-final.  
 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 1-37 is/are pending in the application.  
 4a) Of the above claim(s) 4,10,18-22,29-31 and 33-37 is/are withdrawn from consideration.  
 5) Claim(s) \_\_\_\_\_ is/are allowed.  
 6) Claim(s) 1-3,5,8,11-17,23-27 and 32 is/are rejected.  
 7) Claim(s) 6,7,9 and 28 is/are objected to.  
 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.  
 10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).  
 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
 a) All    b) Some \* c) None of:  
 1. Certified copies of the priority documents have been received.  
 2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date <u>6 and 7</u> . | 6) <input type="checkbox"/> Other: _____  |

## **DETAILED ACTION**

### ***Election/Restrictions***

1. Applicant's election with traverse of Group V, Fig. 15 in Paper No. 12 is acknowledged.

The traversal is on the ground(s) that the species of figs. 13 and 16-24 would not present a previous burden for searching in addition to the elected species since all the species have hook members. This is not found persuasive because significant additional time, previous and now, would be required to examine the species of figs. 13 and 15-20 as compared to examining the species of fig. 15 alone. The fact that all these species include a common element, i.e. a hook is considered irrelevant insofar as the requirement is based upon the differences between the species rather than the similarities. It is noted, however, that the requirement will be withdrawn with respect to any claim properly dependent upon an allowable claim or otherwise properly including all the limitations of an allowable claim.

It is noted that Applicant has indicated claims 34, 35 and 37 as readable upon the fig. 15 embodiment. However, no disclosure can be found that the fig. 15 embodiment includes a closure attached adjacent the recess for closing the recess as set forth in claim 34, a mount pivotally attached to the second support member and pivotally supporting the holding member as set forth in claim 35 or a retaining member configured for attaching the tool holding member to the support member and in snap fit association with the second support member as set forth in claim 37.

The requirement is still deemed proper and is therefore made FINAL.

2. Claims 4, 10, 18-22, 29-31 and 33-37 are withdrawn from further consideration pursuant to 37 CFR 1.142(b), as being drawn to a nonelected species, there being no allowable generic or linking claim. Applicant timely traversed the restriction (election) requirement in Paper No. 12.

*Specification*

3. The disclosure is objected to because of the following informalities: on page 14, line 14 of the specification, the term “griping” appears to be misspelled.

Appropriate correction is required.

*Claim Rejections - 35 USC § 112*

4. Claim 8 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In claim 8, line 2, “a article” is grammatically unclear.

*Claim Rejections - 35 USC § 102*

5. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

6. Claims 1-3, 5, 11, 23-27 and 32 are rejected under 35 U.S.C. 102(b) as being anticipated by Oliva (fig. 1 emb). Oliva discloses a tool holder formed from plastic and including first and second support members 15, 42 which receive and hook around a belt. The holder also includes a tool holding member 26, a stiffening rib 20, 21, or 45, a recessed mounting portion 24, a locking portion 43, 49, a connecting extension 42b engaging a connecting recess 16, 20, and a

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projection 20 facing the other support member 42 and resisting removal of the holder from the belt as claimed. With respect to claim 2, no distinction is seen between the holder of Oliva and that claimed as a result of the method step of injection molding the plastic. The patentability of a product is not dependent upon its method of production.

7. Claims 12-17 are rejected under 35 U.S.C. 102(b) as being anticipated by Liu '165. Liu '165 discloses a tool holder including two support members 12, 14 configured and dimensioned to receive and hook around a belt, a plurality of tool holding members 40, 45, etc. which are retractable as claimed.

*Allowable Subject Matter*

8. Claims 6, 7, 9 and 28 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

9. Claim 8 would be allowable if rewritten to overcome the rejection(s) under 35 U.S.C. 112, second paragraph, set forth in this Office action and to include all of the limitations of the base claim and any intervening claims.

*Conclusion*

The remaining cited prior art is illustrative of the general state of the art.

In order to reduce pendency and avoid potential delays, Technology Center 3700 is encouraging FAXing of responses in Office Actions to (703)872-9306. This practice may be used for filing papers not requiring a fee. It may also be used for filing papers which require a fee by Applicants who authorize charges to a PTO deposit account. Please identify the Examiner and art unit at the top of your cover sheet.

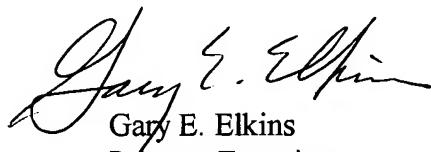
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If in receiving this Office Action, it is apparent that certain documents are missing, e.g. copies of references cited, form PTO-892, etc., requests for copies of such papers should be directed to Errica Bembry at (703)306-4005.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist at (703)308-1078.

Any inquiry concerning this communication or earlier communication from the Examiner should be directed to Gary Elkins at telephone number (703)308-1034. The Examiner can normally be reached Monday through Thursday.

If attempts to reach the Examiner by telephone are unsuccessful, the Examiner's supervisor, Mr. Lee Young can be reached at (703)308-2572.



Gary E. Elkins  
Primary Examiner  
Art Unit 3727

gee  
07 March 2004